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OFFICE OF PETITIONS

In re Application of	:	
Russell J. Apfel	:	
Application No. 10/068,780	:	DECISION ON PETITION
Filed: February 6, 2002	:	
Attorney Docket No. 2069.009200/TT3782	:	

This is a decision on the petition under 37 CFR 1.181, filed July 19, 2006, to withdraw the holding of abandonment.

On June 13, 2005, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period to respond. In the apparent absence of a timely filed response, the application became abandoned on September 14, 2005.

In the present petition, petitioner's practitioner asserted that he filed a timely response to the nonfinal Office action via facsimile transmission on September 12, 2005. In support of his assertion, the practitioner submitted a copy of the response, containing a certificate of facsimile transmission signed by Nancy Nolan dated September 12, 2005, and a copy of the Auto-Reply Facsimile Transmission Confirmation from the USPTO. Additionally, Ms. Nolan stated in a previous correspondence to the USPTO that she transmitted the response by fax on September 12, 2005. However, the Office notes that petitioner indicated the incorrect Application, No. 10/068,730, instead of No. 10/068,780, in the heading of the present petition and the copy of the response.

Pursuant to 37 CFR 1.8:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and,

(3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

After reviewing the record, the response submitted on September 12, 2005, has not been located. As previously stated, the present petition and the response indicated an incorrect application number in the heading. Nevertheless, under current Office procedure, if a paper having an incorrect application number contains sufficient information to identify the correct application and was timely received at the Office, the holding of abandonment will be withdrawn. In reviewing the papers, it is concluded that there was sufficient information thereon to associate the papers with the present application file.

For the reasons stated above, the response is considered timely filed on September 12, 2005. The petition to withdraw the holding of abandonment is granted.

This matter is being referred to Technology Center Art Unit 2643 for a review of the reply of September 12, 2005, re-submitted with the present petition.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
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Office of Petitions